

AMENDED IN SENATE APRIL 13, 2016
AMENDED IN SENATE MARCH 30, 2016

SENATE BILL

No. 1037

Introduced by Senator Allen

February 12, 2016

An act to amend Section 5343.5 of the Food and Agricultural Code, and to amend Sections 803, 11106, 23635, 23690, 25560, 26405, 26825, 26880, 26885, 27520, 27570, 27590, 28160, 28200, 31700, and 32110 of, to add Article 3.5 (commencing with Section 28270) to Chapter 6 of Division 6 of Title 4 of Part 6 of, and to repeal and add Section 26379 of, 803 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 1037, as amended, Allen. ~~Return of firearms: special procedures.~~
Firearms.

Existing law requires the Secretary of Food and Agriculture to maintain quarantine inspection stations. Existing law requires that a sign be conspicuously posted at any inspection station maintained at or near the California border stating that the federal Gun Control Act of 1968 may prohibit persons from bringing firearms into the state that were acquired outside of the state.

The bill would require that these inspection station signs also state that California law may prohibit a person from bringing a firearm into the state that was acquired outside of the state.

Existing law prescribes the statute of limitations for filing various criminal complaints.

This bill would provide that, notwithstanding any other statute of limitation for filing a criminal complaint, the limitation of time would not commence until one year after discovery ~~of of, but in no event later~~

than 5 years after the commission of, the violation for specified offense involving the transfer of firearms, including, among others, violating prohibitions against transferring a firearm to a person who is prohibited from possessing a firearm, *and transferring a firearm to a minor or a handgun to a person under 21 years of age, and failing to complete a firearm transfer through a firearms dealer as required. age.*

~~Existing law generally regulates the sale and transfer of firearms. Existing law requires a firearms transaction conducted by a firearms dealer to include, among other things, a background check of the purchaser, and certain personal information about the purchaser to be submitted to the department. Existing law requires a firearm transfer between 2 persons, neither of whom are a firearms dealer, to be conducted through a dealer. Similarly, existing law requires a person who imports or transports a firearm into this state that was obtained outside of the state to have the firearm delivered to a dealer for delivery to that person.~~

~~This bill would provide a return process for firearms obtained under the circumstances described above and in violation of the requirement that a firearms dealer conduct the transfer. The bill would require the owner of the firearm to deliver the firearm to a firearms dealer, who would report taking possession of the firearm to the department, and would require the firearm to be returned to the prior owner after a background check and other requirements that apply to a firearms transaction conducted by a dealer have been met. A violation of these provisions by a dealer would be a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.~~

~~The bill would make conforming changes to other provisions of law relating to records of firearms transactions kept by the department and a firearms dealer. The bill would, for firearms complying with those return provisions, make conforming changes to other provisions of law that provide exceptions from various prohibitions, including, among others, exceptions to the prohibition against carrying a concealed firearm, to the prohibition against openly carrying a firearm, and to carrying a firearm that is not a handgun in public. The bill would, for firearms returned pursuant to the return provisions, also make exceptions to other provisions of law requiring firearm safety devices, firearm safety certificates, and regulating unsafe handguns.~~

~~Existing law makes it a crime for a person, corporation, or firm to sell, loan, or transfer a firearm to a minor or sell a handgun to an individual under 21 years of age. Existing law makes it a crime for a~~

~~firearms dealer to supply, deliver, or give possession or control of a handgun to any person under 21 years of age, or any other firearm to a person under 18 years of age. Existing law makes these crimes punishable as a misdemeanor, except that in the case of a handgun the crimes are punishable as a misdemeanor or a felony, as specified.~~

~~This bill would make these crimes punishable as a misdemeanor or felony, as specified, in the case of a centerfire semiautomatic rifle.~~

~~Existing law, subject to exceptions, requires a firearms dealer to comply with certain requirements when delivering a firearm to a person, including, among others, that the firearm is not delivered within 10 days of the application to purchase and is not delivered to a person that the Department of Justice has notified the dealer is prohibited from receiving a firearm. Existing law makes a violation of these provisions a misdemeanor, except that in the case of a handgun the violation is a misdemeanor or a felony, as specified.~~

~~This bill would make a violation of those provisions, in the case of a centerfire semiautomatic rifle, punishable as a misdemeanor or a felony, as specified.~~

~~By creating new crimes, this bill would impose a state-mandated local program.~~

~~Existing law requires reports of ownership be filed within certain grace periods for firearms brought or imported into the state by a personal firearms importer or licensed collector. Existing law makes a violation of these provisions a misdemeanor.~~

~~This bill would make a violation of those provisions, in the case of a handgun, punishable as a misdemeanor or a felony.~~

~~By increasing the penalty for an existing offense, this bill would impose a state-mandated local program.~~

~~The bill would provide that the violations of failing to process a firearms transaction through a dealer when neither party to the transaction is a dealer, and of importing a firearm without it going to a dealer for delivery to the importer would not apply if the only evidence of the violation arises because of information supplied to the Department of Justice in connection with the return process described above.~~

~~Existing law prohibits a person, corporation, or dealer from acquiring a firearm for the purpose of selling, loaning, or transferring the firearm if the dealer has the intent to transfer the firearm to a minor or to evade specified requirements on the transfer of firearms, or in the case of a person, if the person intends to violate the requirement that the~~

transaction be conducted through a licensed firearms dealer. A violation of these provisions is punishable as a misdemeanor or a felony.

~~This bill would similarly prohibit a person, corporation, or dealer from transporting a firearm or bringing a firearm into this state for the purpose of selling, loaning, or transferring the firearm with the intent specified above. By expanding the definition of a crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~. State-mandated local program: ~~yes-no~~.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 5343.5 of the Food and Agricultural Code~~
2 ~~is amended to read:~~

3 ~~5343.5. At any inspection station maintained at or near the~~
4 ~~California border by the director pursuant to Section 5341, the~~
5 ~~following sign shall be conspicuously posted in block letters not~~
6 ~~less than four inches in height:~~

7
8 ~~“NOTICE: IF YOU ARE A CALIFORNIA RESIDENT,~~
9 ~~CALIFORNIA LAW AND THE FEDERAL GUN CONTROL~~
10 ~~ACT MAY PROHIBIT YOU FROM BRINGING WITH YOU~~
11 ~~INTO THIS STATE FIREARMS THAT YOU ACQUIRED~~
12 ~~OUTSIDE OF THIS STATE.~~

13 ~~IN ADDITION, IF YOU ARE A NEW CALIFORNIA~~
14 ~~RESIDENT, STATE LAW REGULATES YOUR BRINGING~~
15 ~~INTO CALIFORNIA HANDGUNS AND OTHER DESIGNATED~~
16 ~~FIREARMS AND MANDATES THAT SPECIFIC~~
17 ~~PROCEDURES BE FOLLOWED.~~

18 ~~IF YOU HAVE ANY QUESTIONS ABOUT THE~~
19 ~~PROCEDURES TO BE FOLLOWED IN BRINGING FIREARMS~~
20 ~~INTO CALIFORNIA OR TRANSFERRING FIREARMS~~
21 ~~WITHIN CALIFORNIA, YOU SHOULD CONTACT THE~~
22 ~~CALIFORNIA DEPARTMENT OF JUSTICE OR A LOCAL~~
23 ~~CALIFORNIA LAW ENFORCEMENT AGENCY.”~~

~~SEC. 2.~~

SECTION 1. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison or imprisonment pursuant to subdivision (h) of Section 1170, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of, or asking, receiving, or agreeing to receive, a bribe, by a public official or a public employee, including, but not limited to, a violation of Section 68, 86, or 93.

(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 103800 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under 18 years of age, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial.

1 Independent evidence does not include the opinions of mental
2 health professionals.

3 (4) (A) In a criminal investigation involving any of the crimes
4 listed in paragraph (1) committed against a child, when the
5 applicable limitations period has not expired, that period shall be
6 tolled from the time a party initiates litigation challenging a grand
7 jury subpoena until the end of the litigation, including any
8 associated writ or appellate proceeding, or until the final disclosure
9 of evidence to the investigating or prosecuting agency, if that
10 disclosure is ordered pursuant to the subpoena after the litigation.

11 (B) Nothing in this subdivision affects the definition or
12 applicability of any evidentiary privilege.

13 (C) This subdivision shall not apply if a court finds that the
14 grand jury subpoena was issued or caused to be issued in bad faith.

15 (g) (1) Notwithstanding any other limitation of time described
16 in this chapter, a criminal complaint may be filed within one year
17 of the date on which the identity of the suspect is conclusively
18 established by DNA testing, if both of the following conditions
19 are met:

20 (A) The crime is one that is described in subdivision (c) of
21 Section 290.

22 (B) The offense was committed prior to January 1, 2001, and
23 biological evidence collected in connection with the offense is
24 analyzed for DNA type no later than January 1, 2004, or the offense
25 was committed on or after January 1, 2001, and biological evidence
26 collected in connection with the offense is analyzed for DNA type
27 no later than two years from the date of the offense.

28 (2) For purposes of this section, “DNA” means deoxyribonucleic
29 acid.

30 (h) For any crime, the proof of which depends substantially
31 upon evidence that was seized under a warrant, but which is
32 unavailable to the prosecuting authority under the procedures
33 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
34 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
35 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
36 claims of evidentiary privilege or attorney work product, the
37 limitation of time prescribed in this chapter shall be tolled from
38 the time of the seizure until final disclosure of the evidence to the
39 prosecuting authority. Nothing in this section otherwise affects

1 the definition or applicability of any evidentiary privilege or
2 attorney work product.

3 (i) Notwithstanding any other limitation of time described in
4 this chapter, a criminal complaint may be filed within one year of
5 the date on which a hidden recording is discovered related to a
6 violation of paragraph (2) or (3) of subdivision (j) of Section 647.

7 (j) Notwithstanding any other limitation of time described in
8 this chapter, if a person flees the scene of an accident that caused
9 death or permanent, serious injury, as defined in subdivision (d)
10 of Section 20001 of the Vehicle Code, a criminal complaint brought
11 pursuant to paragraph (2) of subdivision (b) of Section 20001 of
12 the Vehicle Code may be filed within the applicable time period
13 described in Section 801 or 802 or one year after the person is
14 initially identified by law enforcement as a suspect in the
15 commission of the offense, whichever is later, but in no case later
16 than six years after the commission of the offense.

17 (k) Notwithstanding any other limitation of time described in
18 this chapter, if a person flees the scene of an accident, a criminal
19 complaint brought pursuant to paragraph (1) or (2) of subdivision
20 (c) of Section 192 may be filed within the applicable time period
21 described in Section 801 or 802, or one year after the person is
22 initially identified by law enforcement as a suspect in the
23 commission of that offense, whichever is later, but in no case later
24 than six years after the commission of the offense.

25 (l) A limitation of time prescribed in this chapter does not
26 commence to run until the discovery of an offense involving the
27 offering or giving of a bribe to a public official or public employee,
28 including, but not limited to, a violation of Section 67, 67.5, 85,
29 92, or 165, or Section 35230 or 72530 of the Education Code.

30 (m) A limitation of time prescribed in this chapter does not
31 commence to run until one year from the discovery ~~of of, but in~~
32 ~~no event later than five years after the commission of,~~ a violation
33 of Section 27500, ~~27505, 27510, 27515, 27520, 27545, 27560,~~
34 ~~27565, 27585, subdivision (a), (c), (d), (e), or (f) of Section 27540,~~
35 ~~or the discovery of the supplying, selling, giving, or allowing~~
36 ~~possession or control of a firearm in violation of Section 8101 of~~
37 ~~the Welfare and Institutions Code. or 27515.~~

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, March 30, 2016. (JR11)**

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